APPEAL NO. 031910
FILED SEPTEMBER 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on June 17, 2003. The hearing officer decided that the respondent (claimant herein) sustained a compensable injury on _____, and had disability from December 11, 2002, continuing through the date of the CCH. The appellant (carrier herein) files a request for review in which it argues that the evidence established that the claimant did not sustain a new injury, but that he is simply suffering from the continuation of his (first date of injury), injury. The claimant responds, arguing that the evidence supported the hearing officer's finding that the claimant sustained a new injury on _____.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

We have held that the question of whether a claimant sustained a new injury or merely suffered from the continuation of a prior injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 92681, decided February 3, 1993; Texas Workers' Compensation Commission Appeal No. 950600, decided May 31, 1995. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Here, there is conflicting evidence as to whether the claimant sustained a new injury or was suffering from the continuation of his prior injury. It was the province of the hearing officer to resolve these conflicts, and applying the standard of review discussed above, we perceive no error.

As the carrier's attack on the hearing officer's disability finding is solely predicated on its contention the claimant did not suffer a new injury, having affirmed the hearing officer's finding of injury, we likewise affirm his resolution of the disability issue.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Edward Vilano
Appeals Judge